

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PALMARINI, INC.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 1719-17.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER

This case was called from the Court’s trial calendar in Philadelphia, Pennsylvania, on March 13, 2018, for hearing on petitioner’s motion to compel respondent to rescind the notice of deficiency upon which the petition in this case is based. Benito Palmarini appeared on behalf of petitioner. Kristina L. Rico appeared on behalf of respondent.

Background

The Internal Revenue Service (IRS) examined petitioner’s tax returns for 2013 and 2014 (years in issue). Mr. Palmarini acknowledged at the hearing of this matter that he participated in the examination process. On November 14, 2016, the IRS issued a notice of deficiency to petitioner determining deficiencies and accuracy-related penalties for the years in issue. On January 23, 2017, Mr. Palmarini filed a timely petition for redetermination on behalf of petitioner challenging the notice of deficiency.

Petitioner asks the Court to compel respondent to rescind the notice of deficiency on the grounds that the IRS did not follow proper procedures during the examination process, the examination process took more than 27 months, the State of Pennsylvania was declared a disaster area during the years in issue, a 30-day letter was not sent to petitioner’s last known address, and the IRS issued confusing notices in violation of the Taxpayer Bill of Rights.

Section 6212(d)¹ provides that the Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. The statute is permissive and clearly requires mutual consent by the Secretary and the taxpayer to effect a rescission of a notice of deficiency. See, e.g., Slattery v. Commissioner, T.C. Memo. 1995-274. The Secretary has not consented to rescission of the notice of deficiency at any stage of these proceedings, and the Court cannot direct the Secretary to do so.

Liberal construed, petitioner seems to contend that the Court should declare the notice of deficiency to be invalid due to perceived flaws in the examination process. The Court normally will not look behind a notice of deficiency to consider the procedures used in the determination process. See Greenberg's Express, Inc. v. Commissioner, 62 T.C. 324 (1974). In this regard, we need not consider whether respondent sent a 30-day letter to petitioner's last known address. See Cadwell v. Commissioner, 136 T.C. 38, 48-49 (2011), aff'd, 483 F. App'x 847 (4th Cir. 2012). Moreover, there is no indication on this record that petitioner was denied due process in connection with the administrative examination or that petitioner was not afforded a full opportunity to participate in the examination process. The examination was completed in a timely fashion and the notice of deficiency, which clearly explains the Commissioner's determinations, was issued to petitioner within the three-year limitations period prescribed in section 6501(a). The fact that parts of Pennsylvania were declared a Federal disaster areas during the years in issue is simply irrelevant to the validity of the notice of deficiency.

It is well settled that the filing of a timely petition contesting a valid notice of deficiency invests the Court with jurisdiction to resolve finally the taxpayer's liability for the years in issue. See Estate of Ming v. Commissioner, 62 T.C. 519, 521 (1974). Inasmuch as petitioner filed a timely petition in response to a valid notice of deficiency, we will deny petitioner's motion.

Accordingly, upon due consideration and for cause, it is

¹Section references are to the Internal Revenue Code of 1986, as amended.

ORDERED that petitioner's motion to compel respondent to rescind the notice of deficiency, filed September 5, 2017, is denied.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

Dated: Washington, D.C.
March 19, 2018